S.B. CIVIL WRIT PETITION NO. 1794/2006.

(STATE OF RAJASTHAN & ORS. VS. HINDU SINGH & ORS.)

DATE OF ORDER : 22.11.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Shyam Ladrecha, AGA, for the petitioner/s.
Mr. Kuldeep Mathur for the respondents.

By this petition for writ, a challenge is given to the award dated 18.12.2004 passed by Labour Court, Jodhpur in labour case No.10/99 holding therein that non-payment of wages and allowances to workman Shri Hindu Singh working as Langri at Police Station Sam, is illegal and, therefore, directed for regular pay scale and other admissible allowances as given to other Class- IV employees.

While giving challenge to the award, it is contended by counsel for the petitioner that the Department of Police and Police Station, Sam are not an industry as defined under Section 2(j) of the Industrial Disputes Act, 1947, therefore, the award impugned is without jurisdiction.

While contesting the petition for writ, it is contended by counsel for respondent Shri Hindu Singh that the petitioner at first instance approached this Court by way of filing a writ petition (SBCW No.4457/97) and that was disposed of by an order dated 12.12.1997 by relegating the petitioner to avail alternative remedy provided under the Industrial Disputes Act, 1947, therefore, as per directions of this Court in the writ petition No.4457/97, the labour court adjudicated the dispute raised by the petitioner by treating the same as an industrial dispute. It is further contended by counsel for the petitioner that in similar circumstances in the case of Jai Ram vs. State of Rajasthan & others (SBCW Petition No.4063/98), this Court allowed minimum of the pay scale pertaining to Class- IV employees with other allowances to a Langri at a Police Station, Sedwa in district Barmer from the date he filed writ petition claiming regular pay scales. According to counsel for the petitioner the case of the petitioner cannot be distinguished with that of Shri Jai Ram. It is also pointed out by counsel for the petitioner that the Division Bench of this Court by its order dated 27.01.2003 in DB Civil Special Appeal No. 4/2003 (State of Rajasthan & others vs. Jai Ram) has also affirmed the judgment dated 25.02.2002 referred above.

Heard counsel for the parties.

The work of policing by Department of Police is sovereign by nature and, therefore, by no stretch of imagination, the Department of Police or its Police Stations can be termed as an industry under Section 2(j) of the Industrial Disputes Act, 1947. The award impugned by treating the Department of Police as an industry and by treating the respondent Shri Hindu Singh – a workman under the Act of 1947, therefore, is apparently without jurisdiction. It is true that this Court by the order dated 12.12.97 relegated the petitioner to avail remedy under the Act of 1947, but the jurisdiction even under the directions of this Court could not be vested with the Labour Court to adjudicate a dispute pertaining to a body that is not having application of the Act of 1947. This Court in similar circumstances in the case of Kishandas Bajragi vs. Industrial Tribunal- cum- Labour Court, Udaipur & ors. (SBCW Petition No.3563/2006 decided on 22.08.2006) held as under:-

> "A Labour Court is having all authority to deny to answer the reference, if adjudication of the dispute referred is not within its domain. The jurisdiction given to a Labour Court by force of the Act of 1947 cannot be enlarged by the High Court. The jurisdiction of the Court is creation of a Statute and it

cannot feeded beyond the limits prescribed by the law, even by the order of High Court. In present matter, no error, is committed by the Labour Court by refusing to examine merits of the dispute being lacking jurisdiction."

The labour court in view of the law settled could not be vested with jurisdiction to decide the dispute for a body i.e. not an industry even under the orders of this Court, therefore, the Labour Court by the award impugned dated 18.12.2004 while adjudicating an issue relating to Police Department and a Police Station traveled beyond the jurisdiction vested with it.

The case of the petitioner for grant of minimum of the regular pay scale at the first instance was preferred before this Court by way of filing a writ petition under Article 226 of the Constitution of India. This Court by treating the Department of Police and Police Station Sam an industry, relegated the petitioner to avail remedy under the Act of 1947, a direction was also given to appropriate government to refer the dispute raised by the petitioner with regard to grant of regular pay scale to the appropriate Labour Court / Industrial Tribunal. As such, there was no fault on part of the petitioner in prosecuting remedy before the Labour Court. Now in view of the fact that the Labour

Court while adjudicating the dispute of respondent employee acted without jurisdiction, it is to be seen as to what course is required to be adopted for redressal of the grievance made by the petitioner. If this Court leave the matter at this stage without dealing with the grievance of the employee then, it shall be too harsh as he shall be having no decision pertaining to his grievance even after remaining on toes for a period of ten years.

This Court must have denied to exercise its discretion in favour of the petitioner by relegating the mater to Labour Court under the order dated 12.12.97 for the reason that it was quite difficult to settle the dispute pertaining working hours and nature of work of the petitioner. The grievance of the petitioner is with regard to grant of regular pay scale and the Labour Court after examining entire evidence placed before it, gave a finding of fact that Shri Hindu Singh was discharging the duties as Langri at Police Station Sam for a period of 8 hours and he was discharging the duties as required to be discharged by a regular Class IV employee. Though, I have quashed the order passed by the Labour Court, but the finding given by it can very well be accepted by this Court to decide the question with regard to entitlement of the petitioner for grant of the regular pay scale.

In view of the factual aspect determined by the

Labour Court and in view of the judgment of this Court in the case of Jai Ram (supra), I am having no hesitation in holding that respondent Shri Hindu Singh is discharging the duties equivalent to Class IV employee by working as Langri at Police Station Sam, therefore, he is entitled for minimum of the pay scale pertaining to Class IV employee.

In view of whatever discussed above, this petition for writ is disposed of by setting aside the award dated 18.12.2004 with a direction to the petitioner to allow minimum of the regular pay scale pertaining to Class IV employee with all admissible allowances to the respondent Shri Hindu Singh from the date he preferred writ petition No.4457/97 i.e. 12.11.97. The respondent employee shall be entitled for all arrears as directed above.

(GOVIND MATHUR)J.

Anil/